

FEDERAL COST RECOVERY AND PROGRAM MONITORING IN THE EQUITABLE SHARING PROGRAM

EXECUTIVE SUMMARY

The Department of Justice (DOJ) equitable sharing program is designed to enhance cooperation among federal, state, and local law enforcement agencies by sharing proceeds of forfeited assets with agencies that directly participate in an investigation or prosecution that results in a federal forfeiture. During FY 1999, the DOJ shared approximately \$231 million in cash and proceeds with state and local law enforcement agencies.

The preliminary objectives of our audit were to determine the overall effectiveness and efficiency of the equitable sharing program and if the recipients of equitable sharing funds are complying with equitable sharing program guidelines. During the course of our preliminary survey, we refined our objectives to focus on assessing whether: (1) federal costs for administering the program are being recovered; and (2) the Asset Forfeiture and Money Laundering Section, Criminal Division, adequately monitors participating agencies to ensure compliance with program requirements.

We determined that case-related contract costs directly related to equitable sharing cases are not recovered from gross receipts before DOJ personnel determine the amounts available for equitable sharing. In this report, we present an example showing that approximately \$12 million in FY 1999 contract costs were not deducted from gross receipts of forfeitures before determining the amount available for sharing with federal, state, and local law enforcement agencies. Instead, the costs were paid entirely by the Federal Government without any cost to the state and local agencies that participated in investigative activities and benefited from equitable sharing. This condition reduces resources available in the Assets Forfeiture Fund that could be used for other law enforcement purposes. We also determined that the Criminal Division could improve file maintenance and monitoring efforts, while the USMS could improve timeliness of disbursements.

The details of our work are contained in the Findings and Recommendations section of the report. Our objective, scope, and methodology are in Appendix I.

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INTRODUCTION

The Department of Justice (DOJ) Asset Forfeiture Program (AFP) is a nationwide law enforcement program administered by the DOJ. At the time of our audit, the AFP was composed of the following DOJ entities: the Criminal Division, the Justice Management Division (JMD), the Drug Enforcement Administration (DEA), the United States Attorneys Offices (USAOs), the Federal Bureau of Investigation (FBI), the Immigration and Naturalization Service (INS), and the United States Marshals Service (USMS). The Food and Drug Administration, the United States Park Police, and the United States Postal Inspection Service are non-DOJ participants in the program. The AFP has been identified as a high risk area and, until recently, has been considered a material weakness within the DOJ because of problems noted in the management and disposition of seized and forfeited property.

Program Authority

The Comprehensive Forfeiture Act of 1984, part of the Comprehensive Crime Control Act of 1984, created the Justice Assets Forfeiture Fund to help meet the goals of the AFP. The AFP has three primary goals:

- to punish and deter criminal activity by depriving criminals of property¹ used or acquired through illegal activities;
- to enhance cooperation among foreign, federal, state, and local law enforcement agencies through the equitable sharing of assets recovered through this program; and, as a by-product,
- to produce revenues to enhance forfeitures and strengthen law enforcement.

¹ Pursuant to Title 21 C.F.R. §1316.71 the term "property" means a controlled substance, raw material, product, container, equipment, money or other asset, vessel, vehicle, or aircraft.

Title 28 U.S.C. §524(c)(1) established the Assets Forfeiture Fund, which is available to the Attorney General without fiscal year limitation, for funding law enforcement purposes. According to the *Attorney General's Guidelines on Seized and Forfeited Property (AG Guidelines)*, payments and reimbursements are permitted in six general categories:

- asset management expenses,
- case-related expenses,
- payment of qualified third-party interests,
- equitable sharing payments,
- program management expenses, and
- investigative expenses.

The Attorney General's authority to share forfeited property with participating state and local law enforcement agencies is authorized under Title 21 U.S.C. §881(e)(1)(A). Any state or local law enforcement agency² that directly participates in an investigation or prosecution that results in a federal forfeiture may request an equitable share of the net proceeds. Sharing is discretionary, and under no circumstances is the Attorney General required to share property in any case.

Program Management

The Asset Forfeiture Management Staff, JMD: (1) is responsible for the Asset Forfeiture Program's financial reports, (2) monitors financial management aspects of the program, and (3) manages the Consolidated Assets Tracking System (CATS), which contains program performance information, including the number and value of seized, forfeited, and shared assets.

The Criminal Division provides legal, policy, and program oversight for the program. In addition to issuing program guidance, the Criminal Division is responsible for ensuring that equitable sharing recipients: (1) sign an agreement certifying that shares will be used in accordance with DOJ guidelines, (2) submit annual financial reports as required, and (3) properly account for and use shares received.

Generally, the USMS maintains custody, manages, and disposes of seized and forfeited property. The FBI, the DEA, and the INS assist in the seizure and forfeiture process. In joint cases with state and local agencies, the amount of their share will

² A "Law Enforcement Agency" is defined by the Criminal Division as a state or local government organization authorized to engage in as its primary function the investigation, detection, apprehension, arrest, and/or prosecution of individuals suspected or convicted of offenses against the criminal laws of the United States or of any State or Territory of the United States.

depend upon the degree of their direct participation in the law enforcement effort resulting in the forfeiture. The seizing agencies determine equitable share amounts and approve share requests in administrative cases in which the value of forfeited property is less than \$1 million. United States Attorneys review and approve equitable sharing requests in judicial cases in which forfeited property is valued at less than \$1 million. The Deputy Attorney General makes final equitable sharing decisions in cases involving forfeited property with a value of \$1 million or more, multi-district cases, and cases involving the transfer of real property.

FINDINGS AND RECOMMENDATIONS

I. CERTAIN CONTRACT COSTS ARE NOT RECOVERED PRIOR TO EQUITABLE SHARING WITH STATE AND LOCAL LAW ENFORCEMENT AGENCIES

In FY 1993, and again in 1998, the DOJ entered into a contract with DynCorp to provide support services to the AFP, including activities related to equitable sharing. For FY 1999, the obligations under this contract totaled approximately \$42 million. A portion of these contract costs are directly related to specific equitable sharing cases. However, rather than recovering these costs before equitable sharing occurs, case-related contract costs are paid entirely by the federal government without any cost to the state and local agencies that participated in the investigative activities and benefited from equitable sharing. This condition reduces resources available in the Fund for other law enforcement purposes.

The issue of cost recovery in the AFP has been under review within the DOJ for many years. The overall goal of cost recovery is to recoup federal costs by ensuring that all participating agencies that benefit from equitable sharing activities assume a fair share of case-related expenses before equitable shares are calculated. Currently, the Assets Forfeiture Fund bears all case-related DynCorp costs, resulting in an inequitable benefit for state and local law enforcement agencies.

A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies (Guide) illustrates the cost recovery process as shown below:

Gross Receipts (from the forfeiture or the sale of forfeited property):

Less: - Qualified third-party interests (e.g. valid liens, mortgages)
- Federal case-related expenses (e.g. advertising costs, out-of-pocket investigative or litigation expenses)
- Any award paid to a federal informant
- Federal property management expenses (e.g. appraisal, storage, security, sale)

Equals: Net proceeds available for sharing with state and/or local law enforcement entities

Additionally, the *Guide*, as revised in 1994, states that "the federal share in adoptive cases, where 100 percent of pre-seizure activity was performed by a state or local agency, is based on a "flat rate" of the net proceeds. This rate is 20 percent of the

net proceeds. In no case (joint or adoptive) will the federal share be less than twenty percent." The *Guide* applies to seizures made or adopted on or after May 1, 1994.

During our audit, we discussed the establishment and purpose of the minimum federal share (20 percent) with JMD and Criminal Division officials. Neither JMD nor Criminal Division officials were able to provide an explanation of how this percentage was determined. We were also unable to obtain documentation identifying costs that are to be paid from this 20 percent; therefore, we could not confirm that the federal share is fair and reasonable.

The DOJ Federal Asset Forfeiture Working Group (Working Group), established in FY 1997, is in the process of examining categories for cost recovery including those contained in the DynCorp contract. This Working Group, administered by the Criminal Division, consists of representatives from the Criminal Division, JMD, the DEA, the Executive Office for U.S. Attorneys (EOUSA), the FBI, and the USMS. Methods of cost recovery under consideration by the Working Group include requiring the agencies to charge costs directly to an individual case or asset or develop an overhead rate to be applied consistently. The Working Group is also considering not pursuing any further cost recovery beyond the existing federal share.

The DynCorp Contract

As shown on page 4, gross receipts resulting from forfeiture are reduced by federal case-related expenses prior to determination of proceeds available for sharing. Federal case-related expenses are those expenses incurred in connection with normal proceedings undertaken to perfect the United States' interest in seized property through forfeiture. In our judgment, DynCorp costs identified as case-related expenses incurred in connection with proceedings on forfeiture cases that result in equitable sharing should be recovered prior to determining proceeds available for sharing. However, rather than recovering these costs before equitable sharing occurs, case-related contract costs are currently paid entirely by the federal government without any cost to the state and local agencies that participated in investigative activities and benefited from equitable sharing. This condition reduces resources available in the Fund for other law enforcement purposes.

In 1999, the DynCorp contract provided for 927 full-time equivalent (FTE) positions. We reviewed the contract and determined that a significant number of the positions relate to processing specific assets or cases as described on the following page.

- Data Analysts (34 percent of total FTEs) receive and process sharing requests and other documentation. They enter and retrieve data from the database, review and maintain the physical file, ensure information is accurate, and perform analytical computations necessary to process data.
- Records Examiners/Analysts (35 percent of total FTEs) provide data analyst tasks plus other supervisory duties including validation and verification of case files and case data system.
- Property Custodians (3 percent of the total FTEs) receive and store property, deliver items for appraisal and disposal, conduct and maintain inventory, and assist with the preparation of auctions.

As an example of the direct case-related activities for the above contract positions, a state or local law enforcement agency submits an equitable sharing request³ to the DEA based on its participation in the seizure. A DynCorp contract data analyst at the DEA reviews the share request and creates a physical and electronic file on the asset. The data analyst prepares the decision form⁴ and forwards the documents to the appropriate DEA official for the share recommendation. Depending on the type and value of the seizure, the data analyst may send the decision form to the pertinent USAO or the Criminal Division for concurrence or denial. At the USAO, the documents are reviewed and summarized by a DynCorp contract data analyst. The United States Attorney or the Assistant Attorney General, Criminal Division, makes the final equitable sharing recommendation and notifies the USMS. A DynCorp contract data analyst at the USMS maintains the case file folder that identifies each asset seized. Upon notification of the final share decision, the USMS disburses the net proceeds to the state and local law enforcement agency.

We recognize that the DynCorp positions may not be completely dedicated to specific case-related activities. However, in our judgment, the portion of the contract costs that are case-related should be recovered from gross receipts prior to determining any amounts available for equitable sharing.

Previous Studies

Two external reviews of the AFP determined that some forfeiture costs could be directly related to specific contractor positions. In 1994, DOJ engaged Brown & Company, a certified public accounting firm, to create a cost accounting model for the

³ U.S. DOJ Form DAG-71, Application for Transfer of Federally Forfeited Property

⁴ U.S. DOJ Form DAG-72, Decision For Transfer of Federally Forfeited Property

equitable sharing program that would analyze policy options ranging from no cost recovery to total cost recovery. The Brown Model identified specific functions whose costs are not recovered, but are essential to the equitable sharing process including cost of the DynCorp personnel. The Brown Model report states "*... any costs not recovered directly become costs recouped only from the Federal share. Unless decisions on cost recovery are made wisely, the Department could find itself in the position of paying out more in costs and shares than it takes in as the proceeds of the forfeiture.*"

The Brown Model was completed in October 1995 but has not been used, and, to our knowledge, there are no plans for its use in the future. According to a JMD official, the Brown Model did not present a simple enough method for cost recovery. However, the official also said that the model is not the real issue; some federal components simply do not want to recover the costs. The JMD official did not provide any further analysis on why agencies do not want to recover costs. A Criminal Division representative stated that a cost recovery approach of this nature would be difficult and result in a negative response from the law enforcement community.

In our judgment, the Brown Model provides a reasonable basis for cost recovery. However, we agree that the cost accounting method presented in the Brown Model could require a significant level of effort to collect the data necessary to achieve cost recovery.

The Executive Office for Asset Forfeiture (EOAF), which existed prior to shifting responsibilities to JMD and the Criminal Division, conducted an earlier study related to use of contract services. EOAF engaged Systems Flow, Incorporated, to develop a Manpower Standard Implementation Plan for Asset Forfeiture Support (Systems Flow Report), which was completed in October 1992. The objective was to update the staffing standards and workload factors for the Ebon Research Systems (predecessor to DynCorp) contract. The Systems Flow Report identified the number of support positions needed by each agency or work center. We believe the information in this report is useful for identifying optimal staffing based on the number of forfeiture cases processed. The same approach could be useful for correlating DynCorp work activities to specific equitable sharing cases and determining the appropriate cost to be recovered on each case.

Cost Recovery Methods

The overall goal of cost recovery is to recoup federal costs by ensuring that all participating agencies that benefit from equitable sharing activities assume a fair share of case-related expenses before equitable shares are calculated. Currently, the Assets Forfeiture Fund bears all case-related DynCorp costs, resulting in an inequitable benefit for state and local law enforcement agencies.

The most accurate method for charging DynCorp costs to specific equitable sharing cases is job or process costing where each agency tracks labor hours directly to individual cases. This method would result in a precise direct charge based on the amount of direct labor costs incurred by DynCorp employees. The resulting direct charge would be deducted from gross receipts prior to determining net proceeds available for sharing. In March 1998, we discussed this method with the DynCorp Project Manager who stated that the contract does not currently require employees to track labor hours by case. He said that tracking employee hours is possible and would be fairly simple, particularly for some agencies (e.g., USAOs). However, a JMD official said tracking these costs may not be feasible and economically practical at this time. The JMD official did not offer any further explanation beyond existing contract requirements, of difficulties associated with job or process costing.

A second method for recovering direct contract costs is to allocate case-related DynCorp costs through use of a standard percentage. The predetermined standard percentage would be applied to cumulative DynCorp labor charges and result in costs to be distributed to each equitable sharing case. The use of a standard percentage would not be as precise as a direct charge for actual labor. However, it would provide a practical, efficient, and consistent method to ensure that case-related costs are borne by all beneficiaries of equitable sharing.

One example of applying a standard percentage could be to develop a rate by determining the percentage of total seized assets that result in equitable sharing. JMD staff stated that the CATS identified 38,213 DOJ seized assets⁵ during FY 1997, of which, 10,643 could have resulted in equitable sharing.⁶ We divided the number of seized assets that resulted in equitable sharing by the total number of seized assets to arrive at a percentage of seized assets that could result in equitable sharing ($10,643 \div 38,213 = 28\%$). We then applied the 28 percent to the DynCorp FY 1999 contract obligations of \$42.8 million. Using this method, the amount attributed to equitable sharing equals approximately \$12 million as shown in the table on the following page:

⁵ Seized assets consists of monetary instruments, real property, and tangible personal property.

⁶ For our method, equitable sharing is based on the number of DAGs-72 completed but not necessarily approved.

ALLOCATION OF DYNCORP CONTRACT COSTS

AGENCY	FY 1999 DYNCORP OBLIGATIONS	\$ ATTRIBUTED TO EQUITABLE SHARING
Criminal Division	\$ 692,575	\$ 193,921
DEA	18,768,270	5,255,116
EOUSA	8,891,761	2,489,693
FBI	6,066,482	1,698,615
INS	2,538,300	710,724
JMD	775,265	217,074
USMS	5,031,600	1,408,848
TOTAL	\$42,764,253	\$11,973,991

Source: FY 1999 DynCorp obligations provided by the Asset Forfeiture Management Staff, JMD.
Dollars attributed to equitable sharing were calculated by the Office of the Inspector General, Audit Division.

To demonstrate the effect on equitable sharing with state and local agencies, we estimated the amount that would have been shared for 1999 after recovery of DynCorp contract costs. In FY 1999, the DOJ shared approximately \$231 million in cash and proceeds with state and local law enforcement agencies. Had this standard percentage been applied in FY 1999, sharing would have been reduced by approximately \$12 million, resulting in \$219 million shared. This calculation represents a reduction of 5 percent (\$12 million/\$231 million) of total dollars shared.

Views of Responsible Officials

A JMD representative agreed with us that some DynCorp costs such as some of the field positions should be recovered; however, he stated that the method used needs to be practical, definable, and reproducible. Criminal Division officials disagreed with our methodology and our position that DynCorp contract costs could be case-specific. The officials stated that the costs have been viewed as program costs allocated to the entire asset forfeiture program and not to specific cases. They further stated that these program costs are recovered in the minimum federal share in adoptive forfeiture cases and the federal share is already recognized and accepted by cooperating state and local agencies.

As previously stated, we discussed the origin of the federal share with Criminal Division officials, but they were unable to provide any explanation of how the federal share was determined. No documentation was provided to identify any costs recovered by the federal share.

The Working Group expressed concern over the recovery of additional costs by the DOJ and the effect it will have on the state and local law enforcement agencies' willingness to cooperate in joint investigations if they receive a smaller portion of the proceeds. A JMD official said there is a general reluctance to do anything that may diminish the disbursement to state and local law enforcement agencies. JMD officials also expressed concern that if the DOJ tries to recover all costs, equitable sharing might disappear because costs would exceed amounts available for sharing. In addition, a Criminal Division official said this is a major policy issue for state and local law enforcement and that handling cost recovery as we are suggesting in this report would result in a negative response from the law enforcement community. However, the Criminal Division official did not offer any evidence to support his position. While it is true that state and local law enforcement agencies will not directly benefit from additional cost recovery, it is our judgment that a reduced share would neither materially affect cooperation among federal, state, and local authorities nor significantly reduce law enforcement efforts.

Recommendation

We recommend that the Assistant Attorney General, Criminal Division and Assistant Attorney General for Administration, JMD:

1. Ensure that case-related contract costs are deducted from gross receipts prior to distributing equitable shares.

II. THE CRIMINAL DIVISION COULD IMPROVE FILE MAINTENANCE AND MONITORING EFFORTS

Criminal Division staff did not always follow up in a timely manner with state and local agencies that either failed to submit required documents or that reported questionable information. The Criminal Division did not always maintain copies of equitable sharing agreements whereby state and local agency officials certify that their agency will abide by the statutes and guidelines governing the equitable sharing program. The Criminal Division did not follow up with 11 state and local agencies that either failed to submit annual certification reports or that reported questionable equitable sharing expenditures. These reports identify equitable sharing fund balances and categorize expenditures by cost category. Further, state and local agencies did not always submit required annual financial audit reports that assess the agencies' internal controls and compliance with laws and regulations. These weaknesses limit the Criminal Division's ability to confirm that state and local agencies are aware of and agree to abide by program requirements, and to monitor the agencies' use of and accountability for equitable sharing receipts.

The *Guide* requires the submission of the Federal Equitable Sharing Agreement and Federal Annual Certification Report as a prerequisite to the approval of any equitable sharing request. The Federal Annual Certification Report is designed to capture the state or local law enforcement agency funds received and expended for a specific fiscal year. The Guide requires an accurate accounting of funds and by signing the report the law enforcement agency is certifying that the information provided in the certification report is true and correct. This documentation confirms that agencies acknowledge the governing guidelines and agree to use shares in accordance with program requirements.

We attempted to review required program documents for 21 state and local law enforcement agencies that were approved for equitable sharing during FY 1996 or FY 1997. The Criminal Division lacked agreements and certifications for ten agencies as shown on the following page.

INCOMPLETE AGENCY RECORDS

AGENCY	CITY, STATE	MISSING SHARE AGREEMENT		MISSING ANNUAL CERTIFICATION	
		FY 96	FY 97	FY 96	FY 97
Downey Police Department	Downey, CA	X		X	
Gainesville Police Department	Gainesville, FL	X		X	
Georgia State Patrol	Atlanta, GA	X		X	
Gilchrist County Sheriff's Office	Trenton, FL	X		X	X
Lansing Police Department	Lansing, IL	X		X	
Nassau County Sheriff's Department	Hicksville, NY	X		X	
Massachusetts Office of the Attorney General	Boston, MA				X
Palos Hills Police Department	Palos Hills, IL	X		X	
University of IL at Chicago Police Department	Chicago, IL	X		X	
Wakulla County Sheriff's Department	Crawfordville, FL	X	X	X	X

Source: The Federal Equitable Sharing Agreement, and Federal Annual Certification Report contained in the agency files provided by the Asset Forfeiture and Money Laundering Section, Criminal Division.

The Criminal Division staff subsequently provided documentation showing that they notified the Downey Police Department, Gilchrist County Sheriff's Office, and the Palos Hills Police Department of their noncompliance for failure to submit appropriate documentation. However, the missing reports were still not received at the time of our audit.

For the remaining 11 agencies, we reviewed Federal Annual Certification Reports to determine if the reports were complete, expenses appeared reasonable, and the reports were signed. Our review identified only one case that, in our judgment, required follow-up action by the Criminal Division.

In FY 1996, the Pasadena Police Department reportedly spent \$271,963 of equitable sharing proceeds on salaries. According to the *Guide*, the payment of salaries for current permanent law enforcement personnel is not permitted where the payment constitutes a supplantation of the agency's appropriated funds. In our judgment, Criminal Division staff should have contacted the agency to obtain more detailed information to ascertain if the expenditures were appropriate. The Criminal Division, however, said that the Pasadena Police Department listed salaries as an intended use on their application for transfer of federally forfeited property; therefore, no additional inquiry was required. In

our judgment, since payment of salaries for existing positions is an impermissible use of funds per the Guide, additional follow up would have been appropriate to determine if the \$271,963 represented a prohibited supplantation of the Pasadena Police Department's appropriated funds.

The *Guide* requires state and local law enforcement agencies who receive federal shared cash, proceeds, or property valued at over \$100,000 in a single year, or that maintain a federal forfeiture fund account balance of over \$100,000, to have an annual independent financial audit performed. An addendum to the *Guide*, issued in March 1998, states that audits will be conducted as provided by the Single Audit Act Amendments of 1996 (Single Audit Act) and the Office of Management and Budget Circular No. A-133, Audits of States, Local Governments, and Non-Profit Organizations, revised June 24, 1997 (OMB Circular No. A-133). This change increased the audit threshold to \$300,000 for fiscal years beginning after June 30, 1996.

We reviewed documentation for 15 agencies that were required to submit independent financial audits and determined that the Criminal Division did not have the required reports for 12 of the 15 agencies. Approximately \$6.6 million was approved for sharing with these 12 agencies as shown in the table below.

MISSING ANNUAL INDEPENDENT FINANCIAL AUDIT REPORTS

AGENCY	CITY, STATE	APPROVED SHARE
Atlanta Police Department	Atlanta, GA	\$ 353,115
Bridgeview Police Department	Bridgeview, IL	211,869
Downey Police Department	Downey, CA	878,222
Gainesville Police Department	Gainesville, FL	273,090
Georgia State Patrol	Atlanta, GA	176,557
Gilchrist County Sheriff's Office	Trenton, FL	136,545
Hialeah Police Department	Hialeah, FL	333,731
Los Angeles Police Department	Los Angeles, CA	1,019,305
Massachusetts Office of the Attorney General	Boston, MA	2,661,900
North Miami Beach Police Department	North Miami Beach, FL	111,244
Pembroke Pines Police Department	Pembroke, FL	333,731
Wakulla County Sheriff's Department	Crawfordville, FL	136,545
TOTAL		\$6,625,854

Source: Agency and case files provided by the Asset Forfeiture and Money Laundering Section, Criminal Division. The share amount was calculated by the Office of the Inspector General, Audit Division using information contained in the share decision memoranda.

In our judgment, the required audit reports represent independent assessments of the agencies' internal controls and compliance with laws and regulations, and reviews of these reports could strengthen the Criminal Division's ability to monitor the equitable sharing program.

Views of Responsible Officials

Criminal Division officials informed us of some of their efforts to improve program integrity. These efforts included undergoing an equitable sharing program review, implementing new computer systems (Robocop⁷ and CATS), and working on revisions to the DAG-71 and DAG-72. However, in our view, program integrity could be further improved by implementing the following recommendation.

Recommendation

We recommend that the Assistant Attorney General, Criminal Division:

2. Ensure that each agency approved for equitable sharing submits the necessary program documents (Federal Equitable Sharing Agreement, Federal Annual Certification Report, and annual independent financial audit) and that these documents are consistently reviewed for adequacy.

⁷ Robocop is a system for tracking equitable sharing information submitted by law enforcement agencies .

III. ALTHOUGH SHARE DECISION MEMORANDA WERE GENERALLY ISSUED TIMELY, TIMELINESS OF SHARE DISTRIBUTIONS NEEDS IMPROVEMENT

We reviewed cases at the Criminal Division and the USMS to determine the timeliness of equitable sharing decisions, notifications, and distributions. We found that the Asset Forfeiture and Money Laundering Section, Criminal Division generally processed decision memoranda within 180 days after receipt of complete equitable sharing applications. However, the USMS did not consistently distribute funds within its 30-day notification requirement.

Share Decision Memorandum and Notification

Criminal Division staff prepare sharing recommendations for cases valued at \$1 million or more, multi-district cases, or cases involving the transfer of real property. Share decision memoranda summarize each federal, state and local law enforcement agency's contribution to the case, including each agency's recommended sharing percentage. The memoranda must be approved by the Chief of the Asset Forfeiture and Money Laundering Section, Criminal Division, and the Assistant Attorney General, Criminal Division. After the Deputy Attorney General approves the share decision, the Criminal Division notifies the USMS, which then disburses equitable shares to state and local agencies

We reviewed 23 case files⁸ where the share decision was made during FY 1996 or FY 1997 to determine the length of time it takes Criminal Division staff to process share decisions after receiving DAGs-72 from investigative agencies. As shown in the table on the following page, we determined that 10 cases (43 percent) were approved within 180 days, while 13 cases (57 percent) took longer than 180 days.

⁸ In the 23 decisions reviewed, 21 agencies were approved for sharing and 2 were not.

CRIMINAL DIVISION'S SHARE DECISION MEMORANDUM

DECISION COMPLETED BY NUMBER OF DAYS:	NO. OF CASES COMPLETED
0 and 180 days	10
181 and 270 days	2
271 and 360 days	3
361 and 540 days	2
541 and 714 days	4
859 days	1
900 days	1
TOTAL	23

Source: Obtained date from the share decision memoranda contained in the case files provided by the Asset Forfeiture and Money Laundering Section, Criminal Division. The number of days was calculated by the Office of the Inspector General, Audit Division.

A Criminal Division official said that setting timeframes for processing shares does not take into account delays that are beyond the control of the Asset Forfeiture and Money Laundering Section. Reasons for delays identified in our sample cases include:

- extended efforts to obtain workhours from the seizing agencies;
- efforts to confirm that recipient state and local agencies were law enforcement agencies entitled to receive equitable sharing;
- resolution of disputes among seizing agencies and the U.S. Attorneys' Offices on what constituted an equitable share; and
- required DOJ procedures for the approval of international sharing.

The Criminal Division stated that three cases were delayed due to the government furlough in FY 1996, a high turnover rate in contractor staff, and response to myriad requests from the Attorney General. A Criminal Division official stated the receipt of the initial DAG-72 should not be the starting point for determining how long it takes the Asset Forfeiture and Money Laundering Section to complete its work, since most DAGs-72 are incomplete and lack workhour information or a case summary. We concur with that position.

We determined that in 21 of 23 cases that, the Criminal Division notified the USMS within 30 days after the share decision memorandum was approved. In one case, the USMS was not notified until 34 days elapsed, and in two cases the USMS was not

notified until 189 days after the Criminal Division's memorandum was issued. Our review of these two case files indicated that both cases involved international sharing and were subsequently combined into one case. According to a Criminal Division official, this case was delayed because approval from the Department of State had to be obtained. The International Forfeiture Cooperation and Sharing of Confiscated Assets, dated February 1997, states "the ultimate decision of whether and how much to share is made, subject to the review by the Secretary of State, by the Attorney General or the Secretary of the Treasury. No United States representative has the statutory authority to commit to asset sharing in any given case until an international forfeiture sharing agreement has been approved at the highest levels of the Department of Justice (or Treasury) and State."

During our initial review of the case files we found limited documentation explaining the delays. However, based on additional information provided by the Criminal Division, we determined that once the complete sharing package was received, it took approximately 60 days to prepare and submit the share decision memorandum to the Assistant Attorney General, Criminal Division.

Disbursement of Shared Funds

We reviewed 64 cases at the USMS to determine if disbursements of equitable sharing property during FY 1996 and FY 1997 were made to the state and local law enforcement agencies in a timely manner. The *USMS Policy and Procedures Manual, Volume XXI*, dated February 1, 1994, states that all equitable sharing disbursements should be completed within 30 days of receiving the appropriate authorization, absent extenuating circumstances.

In our prior audit titled *Equitable Sharing of Forfeited Property and Cash*, Report Number 93-7, we noted that 46 percent (203 out of 437) of the disbursements tested were not made within 30 days. In this audit, we determined that the USMS made untimely disbursements in 22 of 64 cases (34 percent). The table on the following page presents the time interval between authorization and the equitable sharing disbursement.

USMS DISBURSEMENTS

SHARING COMPLETED BY NUMBER OF DAYS:	SOUTHERN DISTRICT	WESTERN DISTRICT	NO. OF CASES COMPLETED	NO. OF UNTIMELY DISBURSEMENTS
0 and 30 days	23	18	41	0
31 and 40 days	1	6	7	7
41 and 65 days	6	6	12	12
Over 65 days	0	3	3	3
Unable to determine	0	1	1	N/A
TOTAL	30	34	64	22

Source: USMS case files.

USMS staff attributed oversight as the reason for delay in 8 of the 22 delayed cases (2 cases from the Southern District of Texas, and 6 cases from the Western District of Texas). For the remaining 14 cases, the USMS was unable to produce documentation to substantiate their claims, but attributed the delay to:

- erroneous and incomplete data being entered into the CATS by an investigative agency (4 cases from the Southern District of Texas, and 3 cases from the Western District of Texas); and
- investigative expenses not being accurately recorded on the DAG-72, thus requiring follow-up action (1 case from the Southern District of Texas, and 6 cases from the Western District of Texas).

Views of Responsible Officials

The USMS official agreed that some cases were late due to staff oversight or investigative agencies' failure to accurately record information on the DAG-72. The official further stated that the 30-day time frame should not start until the District Office receives a complete application/decision package. While we agree with this policy regarding the 30-day time frame, the USMS still needs to reduce delays caused by other factors, such as staff oversight.

Recommendation

We recommend that the Director, USMS:

3. Ensure that USMS district office staff monitor the timeliness of disbursements and

take corrective action as needed.

STATEMENT ON MANAGEMENT CONTROLS

In planning and performing our audit of the equitable sharing program, we considered the Criminal Division, the JMD, the USMS Headquarters, and two USMS District Office's management control structure for the purpose of determining our audit procedures. This evaluation was not made for the purpose of providing assurance on the management controls of the Criminal Division, the JMD, and the USMS as a whole. However, we noted certain matters involving the management control structure that we consider to be reportable conditions under generally accepted government auditing standards.

Reportable conditions involve matters coming to our attention relating to significant deficiencies in the design or operation of the management control structure that, in our judgment, could adversely affect the ability of the DOJ to effectively administer the equitable sharing program. We identified the following deficiencies:

- certain contract costs were not recovered before determining amounts available for equitable sharing (Finding I);
- required program documents were not always obtained, and follow-up actions were not always performed (see Finding II); and
- disbursements were not timely (see Finding III).

Because we are not expressing an opinion on the Criminal Division's, the JMD's, and the USMS's management control structures as a whole, this statement is intended solely for the information and use of the Criminal Division, the JMD, and the USMS management in administering the equitable sharing program. This restriction is not intended to limit the distribution of this report.

STATEMENT ON COMPLIANCE WITH LAWS AND REGULATIONS

We have audited aspects of the equitable sharing program at the Criminal Division, the JMD, the USMS Headquarters, and two USMS District Offices for FY 1996 and FY 1997, and included a review of selected activities and transactions. The audit was conducted in accordance with generally accepted government auditing standards.

In connection with this audit, and as required by the standards, we tested selected transactions and records to obtain reasonable assurance about the Criminal Division's, the JMD's, and the USMS's compliance with laws, regulations, and guidelines that, if not complied with, we believe could have a material effect on program operations. Compliance with laws and regulations applicable to the equitable sharing program is the responsibility of the Criminal Division, the JMD, and the USMS management.

Our audit included examining, on a test basis, evidence concerning laws and regulations. The specific laws, regulations, and guidelines for which we conducted tests are contained in the relevant portions of:

- Title 28 U.S.C. Section 524, Availability of appropriations;
- OMB Circular No. A-133, Audits of States, Local Governments, and Non-Profit Organizations;
- Single Audit Act Amendments of 1996;
- *The Attorney General's Guidelines on Seized and Forfeited Property*, dated July 1990; and
- *A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies*, dated March 1994, and revisions.

Our tests indicated that, for the cases and records tested, the organizations audited generally complied with the provisions of applicable laws, regulations, and guidelines, except as noted in the Findings and Recommendations Section of the report.

With respect to those transactions not tested, nothing came to our attention that caused us to believe that the Criminal Division, the JMD, or the USMS management was not in compliance with the laws, regulations, and guidelines cited above.

SCOPE AND METHODOLOGY

We performed the audit in accordance with generally accepted government auditing standards and included tests and procedures necessary to accomplish our audit objectives. The objectives of the audit were to assess whether federal costs are being recovered and the DOJ adequately monitors state and local law enforcement agencies that participate in the equitable sharing program.

The scope of this audit covered federal forfeiture cases that were identified by the USMS as decided and forfeited or pending disposition during FY 1996 and FY 1997. We performed audit work at the Asset Forfeiture and Money Laundering Section, Criminal Division in Washington D.C.; the JMD in Washington, D.C.; and at two USMS district offices in Texas. We reviewed DAGs-71, DAGs-72, share decision memoranda, Federal Equitable Sharing Agreements, Federal Annual Certification Reports, annual independent financial audit reports, equitable sharing vouchers, and CATS and Seized Asset Management System (SAMS) reports.

At the Criminal Division, we selected 5 high dollar cases and randomly selected 25 equitable sharing cases out of a universe of 49 available for review.⁹ This initial sample of 30 cases was then adjusted by removing cases with seizures made prior to May 1, 1994, because the current *Guide* does not apply to them. Our final sample consisted of 11 cases that involved shared funds with 21 state and local law enforcement agencies. We reviewed program documentation to determine if required reports were complete, accurate, and timely submitted. We also reviewed financial-related reports to determine if they were complete, reasonable, and accurate.

At the USMS, we judgmentally selected 64 equitable sharing cases completed during FY 1996 and FY 1997 involving currency, personal property, and real property cases totaling \$6.9 million from the universe shown in the following table. At the Southern District in Houston, Texas, we selected 30 cases with a value of approximately \$5.3 million, and at the Western District in San Antonio, Texas, we selected 34 cases with a value of approximately \$1.6 million.

⁹ The cases considered for review consisted of equitable sharing cases that involve forfeited property with a value of \$1 million or more, multi-district cases, and cases involving the transfer of real property.

UNIVERSE OF CASES

DISTRICT	FY 1996		FY 1997	
	# COMPLETED	\$ SHARED	# COMPLETED	\$ SHARED
Southern	549	\$5,557,341	693	\$ 8,490,098
Western	295	\$3,372,367	447	\$ 2,606,108
TOTAL	844	\$8,929,708	1,140	\$11,096,206

Source: CATS Sharing Analysis Report - By Requesting Agency for FY 1996 and FY 1997 for the Southern and Western District of Texas.

We selected these USMS sites based on geographical location, and their Districts high dollar value of equitable shares, as identified on the USMS FY 1996 Seized Asset Management System (SAMS) report. We reviewed the case files including the DAG-72, equitable sharing vouchers, and equitable sharing memorandum to determine if they were complete and accurate. We also traced sharing information to the CATS sharing detail report to determine if the report was complete and accurate.

The following publications apply to the equitable sharing program and were used as criteria for this audit.

- *Attorney General's Guidelines on Seized and Forfeited Property*, dated July 1990;
- *Accounting for Federal Asset Forfeiture Funds, A Guide for State and Local Law Enforcement Agencies*, dated July 1991;
- *The USMS Policy and Procedures Manual, Volume XXI*, dated February 1, 1994;
- *A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies*, dated March 1994;
- *Asset Forfeiture Policy Manual*, dated July 1996; and
- *OMB Circular No. A-133, Audits of States, Local Governments, and Non-Profit Organizations*, revised June 24, 1997.



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JAN 25 2001

MEMORANDUM FOR GLENN A. FINE
Inspector GeneralFROM: Stephen R. Colgate
Assistant Attorney General
for AdministrationSUBJECT: Draft Audit Report on the Federal Cost Recovery and
Program Monitoring in the Equitable Sharing Program

The subject audit report raises questions concerning our current cost recovery practices in the equitable sharing program. We agree that these questions should be addressed. We believe it is important to the program that we appropriately assign and collect costs while continuing to foster the good will of our state and local partners.

We do not believe, however, that the subject audit and our current records provide us sufficient information to calculate all case-related costs. Therefore, we propose to undertake a review of cost recovery in the equitable sharing program through a detailed study of a sample of select cases. This would be a prospective study involving monitoring a core group of cases as they unfold until they are completed. For these cases we would keep the necessary records to accomplish full cost calculation. Because of its prospective nature, we would anticipate that the study would take approximately 2 years to allow for the asset life cycle to run for the sample group of assets. We can use the results to inform our thinking about the best way to calculate appropriate costs and to measure to what extent we are already recovering case-related contract costs.

Our proposal is predicated in part on the disagreements we have with the analysis contained in the subject report. For example, the Office of the Inspector General's (OIG) characterization of the work performed by Dyncorp employees is not consistent with how we would categorize their work. Further, there may be other contracts, other costs, and other means of recovering costs that

Memorandum for Glenn A. Fine

Page 2

should be considered but the OIG audit did not address them. These differences could affect the amounts that the Justice Management Division (JMD) and the Criminal Division would be willing to deduct from the receipts of the sale of an asset to reach net proceeds, i.e., the amount available to be shared. We would be happy to sit down with the OIG staff and detail our disagreements. Further, we are unwilling to accept the current recommendation to the JMD because it is based on this analysis. However, we would be agreeable to resolving this report if the OIG would be willing to recast its recommendation to reflect requirements to study this issue and for the appropriate decisionmaker to implement changes to the current practices that are indicated by the results of the study.

We appreciate the opportunity to comment on the draft report. If you would like to discuss this matter, please feel free to contact me. If your staff have any questions concerning our response they may contact Vickie L. Sloan, Director, Audit Liaison Office on (202) 514-0469.



U.S. Department of Justice

Criminal Division

Office of The Assistant Attorney General

Washington, DC 20530-0001

August 1, 2000

MEMORANDUM

TO: Guy K. Zimmerman
Assistant Inspector General
For Audit
Office of the Inspector General

FROM: James K. Robinson *JKR*
Assistant Attorney General

Mary Lee Warren *MLW*
Deputy Assistant Attorney General

Gerald E. McDowell, Chief *GEM*
Asset Forfeiture and Money
Laundering Section

SUBJECT: Response to the Draft Audit Report on Federal Cost
Recovery and Program Monitoring in the Equitable
Sharing Program

As requested, the Criminal Division's Asset Forfeiture and Money Laundering Section's (AFMLS) comments on the subject draft audit report are provided below.

Recommendation 1. Ensure that case-related contract costs are deducted from gross receipts prior to distributing equitable shares.

For the reasons set forth in the following discussion, AFMLS disagrees with this recommendation. In making this recommendation, your office focuses on DynCorp contract costs and mistakenly construes these costs to be case-related expenses. As we explained to your staff, DynCorp costs are Program costs and, therefore, are not a recoverable expense from gross receipts. Rather than representing case-related costs, these costs are provided for in the minimum federal share that is withheld from all equitable sharings. This practice is accepted as fair and reasonable by the Department's federal forfeiture community and approximately 3,800 state and local law enforcement agencies that participate in the Equitable Sharing Program.

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It has been a long standing policy that contract costs are classified as Program costs. Pursuant to the Anti-Drug Abuse Act of 1986, the Department was authorized to use Assets Forfeiture Fund monies to contract for services related to the seizure and forfeiture of property. One of these contracts was initiated in 1988 with Ebon Research Services, who was later replaced by DynCorp¹, to support forfeiture efforts. As provided in the Attorney General's guidelines, costs incurred to contract for services directly related to the processing, data entry and accounting for forfeiture cases are considered program management expenses². The examples of DynCorp contractor staff activities provided in the report correspond to this definition. The described activities were that a DynCorp contract data analyst at the Drug Enforcement Administration (DEA) reviews the share request, creates a physical and electronic file on the asset, prepares a decision form and forwards the equitable sharing-related documents to the appropriate DEA official for the share recommendation and further processing, as appropriate; a United States Attorney's Office DynCorp contract data analyst reviews and summarizes the documents; and a United States Marshals Service DynCorp contract data analyst maintains the case file folder identifying each seized asset. While these functions are critical to the Program, they are not considered case-related expenses.

Program costs are those which are necessary and proper for the Department's operation of programs mandated by Congress to sustain a national effort to dismantle criminal enterprises and to destroy the economic foundation of such organizations, while incarcerating the leaders and other members and forfeiting the vast wealth they have amassed.

The Department does not focus on the recovery of "costs" attributable to the entire Program but rather certain costs³ such as case-related costs, which are directly related to perfecting

¹The Department has retained contract employees from DynCorp from 1993 to the present.

²The Attorney General's Guidelines on Seized and Forfeited Property (July 1990).

³A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies (March 1994). Federal case-related expenses, qualified third-party interests, awards paid to federal informants, and federal property management expenses are recovered from gross forfeiture receipts to determine the amounts available for equitable sharing.

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the case so that a legally sustainable forfeiture results, otherwise there will be no "costs" to be recovered and no "share" to be distributed. These costs are specific and directly incurred in perfecting the forfeiture and do not require the government to speculate or prorate costs. For example, case-related costs include court and deposition reporting, expert witnesses, courtroom exhibit services, advertising and translations⁴. The flat rate used for the minimum federal share allows the Department to provide for Program costs that would be virtually impossible to associate to specific cases and capture in any other cost efficient manner.

Program costs are recovered in both administrative and judicial forfeitures and such recovery is reflected, for example, in the Federal government's minimum share in adoptive forfeiture cases where no practical process exists to evaluate the total Federal contribution which provides the mechanism for handling thousands of seizures and forfeitures of hundreds of millions of dollars of property each fiscal year.

Historically, it has been the practice for the Department to retain a minimum federal share from the amounts equitably shared with the state and local law enforcement agencies to provide for Program costs such as contract costs. The minimum share was established in 1986 by the Asset Forfeiture Policy Advisory Committee (AFPAC), the initial policy authority overseeing the Program. After an AFPAC review, the use of the minimum federal share was considered a fair, reasonable, and practical process to address Program costs. Thereafter, the Executive Office for Asset Forfeiture (EOAF)⁵, which replaced AFPAC, reviewed and adjusted the share percentage when appropriate. This practice remains in place today and is accepted by the Department's federal forfeiture community and approximately 3,800 participating state and local law enforcement agencies. In 1993, your office audited the Department's costs recovery practices and did not question the practice of treating DynCorp costs as Program costs.

The state and local law enforcement agencies support is critical to the success of our Program. To impose the additional

⁴The Attorney General's Guidelines on Seized and Forfeited Property (July 1990).

⁵The EOAF was dissolved by the Deputy Attorney General in 1994 and the forfeiture policy responsibilities were transferred to AFMLS. The oversight responsibilities for the Assets Forfeiture Fund were transferred to the Asset Forfeiture Management Staff of the Justice Management Division.

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The state and local law enforcement agencies support is critical to the success of our Program. To impose the additional costs of collecting DynCorp contract costs from gross receipts, as the auditors' suggest, represents a major policy change. This action would generate ill-will among the state and local participants in the Program because it would be perceived as unfair and, thus, contrary to the goal of enhancing cooperation among federal, state, and local law enforcement agencies through equitable sharing. Absent a more compelling reason than the auditors' unsupported position that DynCorp contract costs are case-related expenses, we cannot support this recommendation. This is especially true since the auditors have not factored in the minimum federal share and noted in the draft audit report that they "...could not confirm that the federal share is fair and reasonable." The Office of the Inspector General (OIG)-developed model that was used to estimate that approximately \$12 million of FY 1999 DynCorp contract costs were not appropriately recovered from gross receipts, also did not factor the minimum federal share (20 percent) in their computation. As discussed earlier, this minimum share provides for Program costs such as contract costs, so it's unclear how the auditors' recommendation represents a fair and reasonable methodology for determining the equitable shares. It should be remembered that such administrative or program related costs are not recoverable by our state and local law enforcement partners through the equitable sharing process. They recognize that they will have to pay these costs themselves and expect that the Federal government will do the same, whether from the minimum share or otherwise. Accordingly, the Criminal Division does not believe that the auditors' model would be appropriate or acceptable to our law enforcement partners without a corresponding reduction in the minimum share.

There are numerous, acceptable methodologies that can be used to recover the costs associated with the forfeiture program. The process used by the Department was established by AFPAC 14 years ago after extensive consideration by the Department's forfeiture components and input by the state and local law enforcement agencies. This process was then promulgated in the Attorney General's guidelines. The Department's responsible components routinely review Program policies, including cost recovery, to ensure that these policies effectively and efficiently support the Program.

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Recommendation 2. Ensure that each agency approved for equitable sharing submits the necessary program documents (Federal Equitable Sharing Agreement, Federal Annual Certification Report, and annual independent financial audit) and that these documents are consistently reviewed for adequacy.

AFMLS agrees with this recommendation as it pertains to the Federal Equitable Sharing Agreement and Federal Annual Certification reporting requirements at the time that the audit work was performed. AFMLS disagrees with this recommendation as it applies to the current compliance operations in the Section. Over two years ago, when the OIG performed its audit, the Section had recently assumed responsibilities for the new reporting compliance requirements in the Attorney General's Guide⁶ (Guide) without any additional resources to perform this function. In addition, as noted in the report, most of the forfeiture cases processed for equitable sharing disbursements in FY 1996 involved seizures made prior to May 1, 1994, which did not fall under the new compliance reporting requirements found in the Guide. Likewise, the requirement to submit an annual independent financial audit was superseded by the Single Audit Act Amendments of 1996.

The current Agreement/Certification/Audit Unit (ACA Unit) has grown from just one attorney and one contractor (working 50% of their time on ACA issues) to a staff of two attorneys and 4 contractors working full-time on ACA issues. The Unit has developed and implemented an ACA database to track compliance, which currently shows 2990 state and local law enforcement agencies in compliance of the 3800 state and locals entered into the system.

AFMLS continues to review the equitable sharing program and make ongoing improvements in monitoring agencies for compliance with the Program guidelines. To that end, the following procedures have been implemented:

- More information is being collected on the Annual Certification Report:
 - (1) a value must be reported for property (not cash) shared with agencies;
 - (2) the total funds received from the sale of shared property must be reported; and

⁶A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies (March 1994).

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(3) salaries and overtime are reported separately on the report, allowing for a more detailed itemization.

- The compliance database has been modified:

(1) agency identifying information from the Equitable Sharing Agreement is entered into the database, as well as the names of responsible officials signing the agreement for the state and local agencies;

(2) all of the financial information from the Annual Certification Report is entered into the system as the documents are received to facilitate review of shared funds received and the uses of those funds by the agencies;

(3) the compliance database has been expanded to include records of correspondence with state and local agencies and compliance is easily tracked due to enhanced report capability;

(4) procedures to keep agencies advised of their compliance status have been implemented; and

(5) task forces must ensure that all participating agencies have submitted an agreement to AFMLS and are also required to submit copies of their operating documents and a list of member agencies.

- AFMLS has further increased its efforts to ensure compliance with the agreement and certification requirements through integration with the Consolidated Assets Tracking System (CATS). Compliance information from the compliance database is now merged daily with CATS sharing request and other asset tracking information. CATS users are notified on the screen of the compliance status of a state or local agency for which they make a sharing request. Additional improvements in CATS are still being considered to increase enforcement of this policy.
- It is the policy of the Department's asset forfeiture community that no funds are disbursed to state and local agencies that are not in compliance with the agreement and certification reporting requirements. This policy was re-circulated among the Justice Program components on February 28, 1999 (see attachments).
- Through various outreach efforts such as mass mailings and notifications regarding sharing requests made by federal

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agencies on behalf of state and local law enforcement agencies, the AFMLS is in contact with approximately 3800 agencies. Of the 3800, 2990 are in compliance, and AFMLS continues to work towards the goal of 100 percent compliance.

AFMLS disagrees with the finding of the OIG that the Criminal Division staff should have contacted the Pasadena Police Department for its expenditure of \$271,963 on salaries. It is permissible to use shared monies for the payment of salaries for overtime of officers and investigators; payment of the first year's salaries for new law enforcement positions that supplement the workforce; and payments for temporary or not-to-exceed-one year appointments. The OIG report makes an incorrect assumption that shared monies were spent on existing positions and that the \$271,963 represented a prohibited supplantation of the Pasadena Police Department's appropriated funds.

Recommendation 3. Ensure that USMS district office staff monitor the timeliness of disbursements and take corrective action as needed.

AFMLS has no comment on this recommendation since it addresses management issues that are under the purview of the USMS.

Please correct the following errors that were identified in the draft audit report:

- Page 3, first paragraph, incorrectly states that the Assistant Attorney General of the Criminal Division makes final equitable sharing decisions in cases involving forfeited property with a value of \$1 million or more, multi-district cases, and cases involving the transfer of real property. These decisions are made by the Deputy Attorney General except in sharing cases where there is no disagreement as to the amount to be shared among the seizing agency, the United States Attorney and the AFMLS. The Deputy Attorney General has retained the authority in the other situations.
- Page 3, last paragraph, fourth sentence should read as "The seizing agencies..." not "The federal agencies...."
- Page 4, second paragraph, second sentence incorrectly states that "The overall goal of cost recovery is to recoup federal costs by ensuring that all participating agencies that

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- Page 4, second paragraph, second sentence incorrectly states that "The overall goal of cost recovery is to recoup federal costs by ensuring that all participating agencies that benefit from equitable sharing activities assume a fair share of case-related expenses before equitable shares are calculated." It is a Department policy that certain costs are recovered from gross receipts. These costs are federal case-related expenses, qualified third-party interests, awards paid to federal informants, and federal property management expenses.
- Page 5, last paragraph, first sentence incorrectly cites that "gross receipts resulting from forfeiture must be reduced ..." and should read as "are reduced...."

The Criminal Division appreciates the opportunity to provide comments to your office on the draft report.

Attachments

cc: Stephen R. Colgate
Assistant Attorney General for Administration
Justice Management Division

John W. Marshall
Director
United States Marshals Service

Debra Frary
Audit Liaison
Criminal Division

Vickie L. Sloan
DOJ Audit Liaison

OIG Note: The attachments are not included for sake of brevity.




U.S. Department of Justice

United States Marshals Service

Arlington, VA 22202-4210

July 6, 2000

MEMORANDUM TO: Guy K. Zimmerman
Assistant Inspector General
for Audit

FROM: Michael R. Ramon 
Deputy Director

SUBJECT: Response to Draft Audit Federal Cost Recovery and Program
Monitoring in the Equitable Sharing Program

This is in response to your memorandum of June 16, 2000, regarding the above referenced Office of the Inspector General audit report. The United States Marshals Service (USMS) has reviewed the report and agrees with the recommendation to ensure that the USMS district offices make equitable sharing disbursements in a timely manner. I have taken action on this recommendation by reissuing the attached memorandum regarding Asset Forfeiture Policy 91-30, Procedural Guidelines for the Equitable Sharing Program to all district offices.

Should you require any additional information regarding this audit and the USMS response, please contact Tim Virtue, Acting Chief, Asset Forfeiture Office, at 202-307-9228.

Attachment

OIG Note: The attachment is not included for sake of brevity.

**OFFICE OF THE INSPECTOR GENERAL, AUDIT DIVISION
ANALYSIS AND SUMMARY OF
ACTIONS NECESSARY TO CLOSE REPORT**

We have carefully reviewed and considered the United States Marshals Service's, the Justice Management Division's (JMD), and the Criminal Division's responses to our draft audit report. We made minor revisions to the final report where appropriate. The following is our reply to agency responses to individual recommendations. The status of the three recommendations and specific actions necessary to close the audit follow our reply.

Recommendation 1

Both Criminal Division and JMD officials provided comments regarding our conclusion that some DynCorp contract costs should be considered case-related costs and recovered prior to equitable sharing. It is apparent that there is a difference of opinion between the Criminal Division and JMD. While agreeing that cost recovery is an issue that needs to be addressed, JMD also states that there may be other costs that were not considered as part of our report that may be subject to cost recovery. Conversely, the Criminal Division asserts that DynCorp contract costs are program costs and therefore, are provided for in the minimum federal share percentage. In our judgment, the current state of disagreement between JMD and the Criminal Division demonstrates the need for a practical approach for recovery of case-related costs.

JMD proposes to undertake a two-year review of cost recovery in the equitable sharing program through a detailed study of a sample of select cases. Although the OIG stands by its original report analysis and conclusion that some DynCorp costs are directly case-related, we also believe that it would be beneficial to achieve the overall goal of cost recovery through a comprehensive examination of all relevant costs. In our judgment, however, a 2-year time period is too long for further study.

It must be noted that our report includes information on previous studies related to cost recovery that were conducted in 1992 and 1995. In each case the results of the study were not implemented. One of these studies even concluded that *"... any costs not recovered directly become costs recouped only from the Federal share. Unless decisions on cost recovery are made wisely, the Department could find itself in the position of paying out more in costs and shares that it takes in as proceeds of the forfeiture."* We believe this conclusion is a valid concern and we encourage JMD to expedite the proposed two-year and complete it in a shorter timeframe.

Recommendation 2

The Criminal Division generally agrees with our compliance recommendation to Finding II. However, its response states "... most of the forfeiture cases processed for equitable sharing disbursements in FY 1996 involved seizures made prior to May 1, 1994, which did not fall under the new compliance report requirements..." While this statement may be true with regard to a percentage of the total cases with disbursements in FY 1996, the statement is not true for the cases referred to in this finding. The 12 agencies identified on page 13 of our report involve cases where the seizures occurred subsequent to May 1, 1994; therefore, the Criminal Division failed to ensure compliance with the reporting requirements at the time of our review.

The Criminal Division did not believe that it should have contacted the Pasadena Police Department regarding the \$271,963 salary expenditure. Our concern regarding this condition was that such a significant amount of equitable sharing funds should be carefully monitored to ensure funds are used in compliance with applicable standards. We did not make any assumption regarding the use of these funds in our review of the Pasadena Police Department's annual certification report. We simply recommended that the Criminal Division follow-up to determine if the shared amount spent on salaries was a permissible use. It appears that the Criminal Division has accepted the risk associated with its decision to forego additional follow up in this case. Our decision to close this recommendation is based on subsequent actions taken by the Criminal Division to strengthen its monitoring process.

Recommendation 3:

There was no disagreement and the United States Marshals Service took sufficient corrective action to close the recommendation.

STATUS OF RECOMMENDATIONS

1. **Resolved.** This recommendation can be closed upon completion and implementation of the results of the cost recovery study proposed by JMD. The study needs to identify and determine a method of recovery for case-related contract costs as well as the types of other case-related costs that should be deducted from forfeiture proceeds prior to sharing.
2. **Closed.**
3. **Closed.**